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05 UNITED STATES DISTRICT COURT  
06 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

07 WESLEY P., )  
08 Plaintiff, ) CASE NO. C20-0699-MAT  
09 v. )  
10 COMMISSIONER OF SOCIAL ) ORDER RE: SOCIAL SECURITY  
SECURITY, ) DISABILITY APPEAL  
11 Defendant. )  
12 \_\_\_\_\_ )

13 Plaintiff proceeds through counsel in his appeal of a final decision of the  
14 Commissioner of the Social Security Administration (Commissioner). The Commissioner  
15 denied Plaintiff's applications for Disability Insurance Benefits (DIB) and Supplemental  
16 Security Income (SSI) after a hearing before an Administrative Law Judge (ALJ). Having  
17 considered the ALJ's decision, the administrative record (AR), and all memoranda of record,  
18 this matter is AFFIRMED.

19 **FACTS AND PROCEDURAL HISTORY**

20 Plaintiff was born on XXXX, 1956.<sup>1</sup> He has a high school diploma and previously

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22 <sup>1</sup> Dates of birth must be redacted to the year. Fed. R. Civ. P. 5.2(a)(2) and LCR 5.2(a)(1).

01 worked as a truck driver and material handler. (AR 1442.)

02 Plaintiff applied for DIB and SSI in December 2010 and April 2011, respectively.  
03 (AR 206-19.) Those applications were denied and Plaintiff timely requested a hearing. (AR  
04 139-42, 145-50, 156-57.)

05 In September 2012, ALJ Tom Morris held a hearing, taking testimony from Plaintiff  
06 and a vocational expert (VE). (AR 36-80.) In November 2012, the ALJ issued a decision  
07 finding Plaintiff not disabled. (AR 16-35.) Plaintiff timely appealed. The Appeals Council  
08 denied Plaintiff's request for review (AR 1-5), making the ALJ's decision the final decision of  
09 the Commissioner.

10 Plaintiff appealed this final decision of the Commissioner to this Court, which  
11 reversed the ALJ's decision and remanded for additional proceedings. (AR 525-38.) ALJ  
12 Morris held another hearing on remand in December 2015 (AR 543-87), and subsequently  
13 found Plaintiff not disabled. (AR 494-519.) The Appeals Council denied Plaintiff's request  
14 for review (AR 487-93), and Plaintiff again sought judicial review in this Court, which  
15 reversed the ALJ's decision and remand for further proceedings. (AR 1544-52.)

16 On remand, ALJ Stephanie Martz held another hearing (AR 1455-93), and  
17 subsequently found Plaintiff not disabled. (AR 1423-44.) The Appeals Council denied  
18 Plaintiff's request for review (AR 1370-75), and Plaintiff now seeks judicial review.

### 19 **JURISDICTION**

20 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. §  
21 405(g).

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**DISCUSSION**

The Commissioner follows a five-step sequential evaluation process for determining whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it must be determined whether the claimant is gainfully employed. The ALJ found Plaintiff had not engaged in substantial gainful activity since January 1, 2009, the alleged onset date. (AR 1426.) At step two, it must be determined whether a claimant suffers from a severe impairment. The ALJ found severe Plaintiff's affective disorder. (AR 1426-29.) Step three asks whether a claimant's impairments meet or equal a listed impairment. The ALJ found that Plaintiff's impairment did not meet or equal the criteria of a listed impairment. (AR 1429-31.)

If a claimant's impairments do not meet or equal a listing, the Commissioner must assess residual functional capacity (RFC) and determine at step four whether the claimant has demonstrated an inability to perform past relevant work. The ALJ found Plaintiff capable of performing a full range of work at all exertional levels, with the following nonexertional limitations: he can understand, remember, and carry out simple as well as routine tasks and instructions. He can work independently, not on team or tandem tasks. He can have occasional, superficial (i.e., task-related) interaction with co-workers, and should not interact with the public. He can accept supervisory instructions and have occasional contact with supervisors. He should work in a routine and predictable work environment. (AR 1431.) With that assessment, the ALJ found Plaintiff unable to perform past relevant work. (AR 1446.)

If a claimant demonstrates an inability to perform past relevant work, the burden shifts

01 to the Commissioner to demonstrate at step five that the claimant retains the capacity to make  
02 an adjustment to work that exists in significant levels in the national economy. With the  
03 assistance of the VE, the ALJ found Plaintiff capable of transitioning to other representative  
04 occupations, such as janitor, packager, and assembler. (AR 1143.)

05 This Court's review of the ALJ's decision is limited to whether the decision is in  
06 accordance with the law and the findings supported by substantial evidence in the record as a  
07 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means  
08 more than a scintilla, but less than a preponderance; it means such relevant evidence as a  
09 reasonable mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881  
10 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational interpretation, one of which  
11 supports the ALJ's decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278  
12 F.3d 947, 954 (9th Cir. 2002).

13 Plaintiff argues the ALJ erred in (1) rejecting certain diagnoses as not severe at step  
14 two, (2) discounting his subjective symptom testimony, and (3) discounting certain medical  
15 evidence and opinions. The Commissioner argues that the ALJ's decision is supported by  
16 substantial evidence and should be affirmed.

17 Step two

18 The ALJ found several of Plaintiff's mental impairments to be not medically  
19 determinable at step two, but did list affective disorder as a severe, medically determinable  
20 impairment. (AR 1426-29.) The ALJ also indicated that even if the non-medically  
21 determinable impairments had been established, they would not have caused greater  
22 limitations than the ALJ included in the RFC assessment. (AR 1429.)

01 At step two, a claimant must make a threshold showing her medically determinable  
02 impairments significantly limit her ability to perform basic work activities. *See Bowen v.*  
03 *Yuckert*, 482 U.S. 137, 145 (1987); 20 C.F.R. § 404.1520(c). A medically determinable  
04 impairment must be supported by objective medical evidence from an acceptable medical  
05 source. 20 C.F.R. § 404.1521; Social Security Ruling (SSR) 16-3p, 2017 WL 5180304, at \*3  
06 (Oct. 25, 2017). Neither a statement of symptoms, a diagnosis, nor a medical opinion suffices  
07 to establish the existence of a medically determinable impairment. 20 C.F.R. § 404.1521.  
08 “Medical signs and laboratory findings, established by medically acceptable clinical or  
09 laboratory diagnostic techniques, must show the existence of a medical impairment(s) which  
10 results from anatomical, physiological, or psychological abnormalities and which could  
11 reasonably be expected to produce the pain or other symptoms alleged.” 20 C.F.R. §  
12 404.1529(b).

13 In this case, Plaintiff notes that several examining psychologists and the State agency  
14 consultants listed diagnoses other than affective disorder, and thus he contends that the ALJ  
15 erred in finding that only affective disorder was a medically determinable impairment at step  
16 two. Dkt. 12 at 3-5. Plaintiff fails to show that any harm resulted from this aspect of the  
17 ALJ’s decision, however; the ALJ explicitly found that even if the omitted mental diagnoses  
18 had been established as medically determinable impairments, they would not have led to any  
19 additional restrictions in the RFC assessment. (AR 1429.)

20 The Commissioner argued this point in the response brief (Dkt. 14 at 3), and  
21 Plaintiff’s reply brief fails to identify any particular limitation that was excluded as a result of  
22 the step-two finding. Plaintiff notes that the ALJ, in providing multiple reasons to discount

01 the examining psychologists' opinions, emphasized that some of the examiners diagnosed  
02 Plaintiff with conditions found to be not medically determinable (AR 1438-41), but these  
03 findings do not show that the ALJ excluded any particular limitation from the RFC  
04 assessment solely as a result of the step-two findings. Plaintiff has therefore not met his  
05 burden to show that any harm resulted from the ALJ's step-two findings.

06 Subjective symptom testimony

07 The ALJ discounted Plaintiff's subjective symptom testimony because (1) Plaintiff's  
08 treatment record fails to corroborate any significant deterioration in his condition during the  
09 adjudicated period and instead demonstrates improvement with treatment; (2) Plaintiff's  
10 activities (creating and performing music to the public on a regular basis) contradict his  
11 allegations of disabling cognitive/social deficits; (3) the record shows that Plaintiff made  
12 inconsistent statements about his substance use and his psychological symptoms; and (4) the  
13 treatment notes suggest Plaintiff was often focused on addressing situational stressors such as  
14 housing, police violence, family relationships, and confrontations with homeless and addicted  
15 people, as well as on receiving disability benefits, rather than on treating his impairments.  
16 (AR 1431-35.) Plaintiff argues that these reasons are not clear and convincing, as required in  
17 the Ninth Circuit. *Burrell v. Colvin*, 775 F.3d 1133, 1136-37 (9th Cir. 2014).

18 Treatment record

19 The ALJ found that the objective treatment record is inconsistent with Plaintiff's  
20 allegations of disability because it shows that Plaintiff's "mental symptoms have been  
21 responsive to medication when he takes it as prescribed, and that, when seen, he has had  
22 relatively benign mental status findings during appointments." (AR 1433.)

01 Plaintiff does not dispute that his mental condition improved with treatment in 2017  
02 and 2018, but argues that the ALJ failed to cite objective evidence from the entire adjudicated  
03 period indicating that his symptoms were less severe than alleged.<sup>2</sup> Dkt. 12 at 10. The ALJ's  
04 discussion of the treatment record, however, addresses the evidence pertaining to the entire  
05 adjudicated period, rather than only 2017 and 2018. (AR 1431-33.) For example, the ALJ  
06 cited treatment notes from 2009 and 2011 wherein Plaintiff was not taking any medication nor  
07 participating in counseling. (AR 1431-32 (citing AR 330, 348, 360-61, 363, 381-82, 384-  
08 85).) The ALJ also cited treatment notes showing that Plaintiff's condition improved with  
09 medication and counseling in 2011, 2012, 2014, and 2015-2018, and that providers described  
10 Plaintiff's depression as in remission in 2015-2018. (AR 1432-33 (citing *inter alia* AR 387-  
11 88, 397, 399, 423-28, 439, 441, 458, 462, 484-85, 891, 893, 904, 917, 1000, 1003, 1046,  
12 1061, 1118, 1136, 1183, 1205, 1260, 1278, 1351, 1703, 1782-83, 1852, 1863, 1878, 1880,  
13 1943, 1945, 2144 ).)

14 Even if, as Plaintiff emphasizes, some of his symptoms persisted despite his  
15 improvement, the ALJ's RFC assessment includes significant mental limitations (AR 1431)  
16 and Plaintiff has not shown that the ALJ erred in finding that the objective evidence failed to  
17 support more severe limitations.

#### 18 Activities

19 The record describes Plaintiff's ability to compose and publicly perform music on a  
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21 <sup>2</sup> Plaintiff suggests that the ALJ should have considered a closed period of disability based on  
22 improved mood after 2015 (Dkt. 12 at 10), but Plaintiff did not make such an argument to the ALJ and  
instead counsel urged the ALJ at the hearing to find Plaintiff disabled throughout the entire  
adjudicated period, despite acknowledging improvement. (AR 1461-62.)

01 regular basis, and the ALJ found this activity to be inconsistent with Plaintiff's allegation of  
02 disabling cognitive/social deficits. (AR 1434.) Plaintiff argues that his music activities  
03 demonstrate his "slow but progressive mental improvement" since his disability onset, but  
04 contends that he nonetheless continued to experience disabling mental dysfunction, such that  
05 his ability to play music "did not translate into an ability to engage in gainful work activity."  
06 Dkt. 12 at 11-12. But the ALJ did not cite Plaintiff's music activities as evidence that he  
07 could work: the ALJ cited Plaintiff's ability to compose and perform music in public as  
08 evidence that his cognitive and social limitations were not as severe as he alleged. (AR  
09 1434.) Plaintiff has not shown that the ALJ's stated reasoning was unreasonable or  
10 erroneous.

11 Plaintiff goes on to challenge the ALJ's reliance on his music activities for another  
12 reason: because he did not compose and play music for the entire adjudicated period, but only  
13 after 2014, Plaintiff argues that this activity does not serve as a reason to find him not  
14 disabled during the entire period. Dkt. 12 at 13. But this was not the only reason the ALJ  
15 provided for discounting Plaintiff's allegations: given that the ALJ provided other reasons that  
16 span the entire adjudicated period, the ALJ did not err in relying on this activity to the extent  
17 that Plaintiff engaged in it during the period.

18 Accordingly, the Court finds that Plaintiff has not established error in the ALJ's  
19 findings related to Plaintiff's music activity.

20 Inconsistent reporting of substance use

21 The ALJ cited evidence showing that Plaintiff made inaccurate or inconsistent  
22 statements regarding his substance use and hallucinations, and found that these discrepancies

01 undermined the reliability of Plaintiff's self-report. (AR 1434-35.)

02 Plaintiff argues that the record does not suggest that he attempted to hide his substance  
03 use, and contends that he was "quite candid" with his providers. Dkt. 12 at 13. But the ALJ  
04 cited treatment notes wherein Plaintiff was not entirely candid with his providers. (*See, e.g.*,  
05 AR 347 (urine test positive for cocaine and marijuana on December 21, 2011), 399 (on  
06 December 13, 2011, Plaintiff initially denied any prior history of alcohol or drug use, but then  
07 upon further questioning admitted using marijuana years ago; provider was aware of a urine  
08 test positive for cocaine only four months earlier that Plaintiff did not disclose), 860 (Plaintiff  
09 denied any history of drug or alcohol abuse to an examining psychologist), 1195 (Plaintiff  
10 disclosed a long history of using cannabis as well as current use to his treating provider,  
11 despite previously denying any use or history of use), 1652 (Plaintiff denied any history of  
12 substance abuse or dependence to an examining psychologist).) The treatment notes cited by  
13 the ALJ do not demonstrate candor.

14 Plaintiff also argues that the ALJ erred in discounting his allegations based on  
15 inconsistencies in his reporting of alcohol or drug use, because this amounts to a general  
16 finding that he is not a truthful person, which is contrary to SSR 16-3p. Dkt. 12 at 13. The  
17 Court disagrees. The ALJ pointed to specific inconsistencies in Plaintiff's statements to  
18 providers, rather than, for example, inferring from the evidence of his drug use that he is not a  
19 truthful person. The ALJ did not err in citing Plaintiff's inaccurate reporting of his substance  
20 use as one reason to discount his allegations. *See, e.g., Freeman v. Saul*, 785 Fed. Appx. 388  
21 (9th Cir. Nov. 19, 2019) (affirming an ALJ's discounting a plaintiff's allegations because she  
22 "lied to the ALJ and her treatment providers about her illegal drug use").

01 Furthermore, the ALJ also cited evidence that Plaintiff reported experiencing  
02 hallucinations during evaluations for benefits (AR 373 (reporting daily auditory  
03 hallucinations), 418 (describing auditory hallucinations), 859 (describing auditory  
04 hallucinations that have been occurring for five years, in October 2012)), but denied  
05 experiencing hallucinations to treating providers. (AR 1435 (citing AR 1036, 1063, 1119,  
06 1137, 1196, 1218, 1279, 1778, 1850, 1861, 1878, 1943).) The ALJ did not err in relying on  
07 these inconsistencies in discounting Plaintiff's allegations.

08 Situational stressors & disability focus

09 Plaintiff does not dispute that (as the ALJ found) his treatment notes reference  
10 situational stressors as well as a focus on receiving disability benefits, but argues that the ALJ  
11 failed to explain how these references undermine his allegation of disabling mental  
12 symptoms. Dkt. 12 at 10-11. Plaintiff is mistaken: the ALJ found that the treatment notes  
13 "appear more focused on dealing with situational stressors . . . than dealing with his  
14 depression." (AR 1434 (emphasis added).) The ALJ reasonably suggested that because the  
15 treatment notes (AR 451-86, 976-1369, 1757-2198) indicate that during many of his  
16 appointments Plaintiff was focused not on treating his conditions but on receiving help related  
17 to applying for housing, understanding police violence, maintaining benefits eligibility,  
18 relationship issues, and handling confrontations with homeless and addicted people, this focus  
19 undermines Plaintiff's allegation that he cannot work due his impairments. The ALJ also  
20 pointed to evidence that Plaintiff could not be redirected from his focus on obtaining benefits,  
21 during at least one treatment appointment. (AR 1434 (referring to AR 1130-31).) The  
22 evidence cited by the ALJ suggests that many of Plaintiff's treatment notes address issues

01 other than treatment for his impairments, and the ALJ reasonably found that this undermined  
02 Plaintiff's allegation that he cannot work due to his impairments. *See* SSR 82-61, 1982 WL  
03 31387, at \*1 (Jan. 1, 1982) ("A basic program principle is that a claimant's impairment must  
04 be the primary reason for his or her inability to engage in substantial gainful work.").

05 Because the ALJ provided multiple legally valid reasons to discount Plaintiff's  
06 allegations, the Court affirms this portion of the ALJ's decision.

07 Medical evidence

08 Plaintiff argues that the ALJ erred in assessing several opinions written by acceptable  
09 medical sources as well as non-acceptable medical sources (hereinafter "the challenged  
10 opinions"), each of which describe disabling mental limitations. (*See* AR 318-27 (October  
11 2010 opinion of examining psychologist Robert Parker, Ph.D.), 371-76 (June 2011 opinion of  
12 examining psychologist David Widlan, Ph.D.), 417-22 (September 2011 opinion of  
13 examining psychologist Melanie Mitchell, Psy.D.), 429-30 (September 2012 letter of treating  
14 psychologist Meghan Szczebak, Psy.D., LMHC), 431 (September 2012 letter of treating  
15 counselor David Robinson, LMHC), 859-68 (October 2012 opinion of Dr. Widlan), 1651  
16 (November 2010 opinion of non-examining psychologist Phyllis Sanchez, Ph.D.), 1652-56  
17 (August 2015 opinion of examining psychologist Geordie Knapp, Psy.D.), 1657-61 (August  
18 2015 opinion of non-examining psychologist Brian VanFossen, Ph.D.), 2199 (September  
19 2018 letter of treating counselor Antonia Caliboso, LICSW).)

20 The ALJ found the challenged opinions to be inconsistent with evidence of Plaintiff's  
21 improvement with treatment and benign mental status examination findings, and inconsistent  
22 with Plaintiff's activities. (AR 1437-38.) The ALJ also discounted the challenged opinions to

the extent that they were rendered without access to Plaintiff's longitudinal treatment record. (AR 1438.) Lastly, the ALJ noted that each of the authors of the challenged opinions relied at least in part on Plaintiff's self-report, which the Court found to be not fully reliable. (AR 1438.) The Court will address the sufficiency of each of the ALJ's reasons for discounting the challenged opinions, as well as the ALJ's additional reasons related to Mr. Robinson's opinion.

#### Legal standards

In general, more weight should be given to the opinion of a treating doctor than to a non-treating doctor, and more weight to the opinion of an examining doctor than to a non-examining doctor. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996).<sup>3</sup> Where not contradicted by another doctor, a treating or examining doctor's opinion may be rejected only for "clear and convincing" reasons. *Id.* (quoting *Baxter v. Sullivan*, 923 F.2d 1391, 1396 (9th Cir. 1991)). Where contradicted, a treating or examining doctor's opinion may not be rejected without "specific and legitimate reasons" supported by substantial evidence in the record for so doing." *Lester*, 81 F.3d at 830-31 (quoting *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)).

Lay witness testimony as to a claimant's symptoms or how an impairment affects ability to work is competent evidence and cannot be disregarded without comment. *Van Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th Cir. 1996). The ALJ can reject the testimony of lay witnesses only upon giving germane reasons. *Smolen v. Chater*, 80 F.3d 1273, 1288-89

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<sup>3</sup> Because Plaintiff filed disability applications prior to March 27, 2017, the regulations set forth in 20 C.F.R. § 404.1527 and § 416.927 apply to the ALJ's consideration of medical opinions.

01 (9th Cir. 1996)

02 Inconsistent with objective treatment record and evidence of improvement<sup>4</sup>

03 Plaintiff argues that the ALJ erred in relying on the treatment record and evidence of  
04 improvement as a reason to discount the challenged opinions because the treatment record did  
05 not demonstrate improvement until 2017, and in years prior Plaintiff's examinations showed  
06 significant deficits. Dkt. 12 at 15. Plaintiff also contends that even after he started to improve  
07 in 2017, the record shows that some limitations persisted. Dkt. 12 at 15.

08 Plaintiff's arguments are not persuasive, for reasons discussed earlier with respect to  
09 his subjective allegations. The ALJ cited evidence from throughout the adjudicated period  
10 showing that Plaintiff's symptoms improved with medication and counseling, and to the  
11 extent that the record showed that some symptoms persisted even with treatment, those  
12 symptoms are accounted for in the ALJ's RFC assessment. (AR 1431-33.) Because the ALJ  
13 reasonably found the challenged opinions to be inconsistent with the medical record, the ALJ  
14 did not err in discounting the opinions on this basis. *See Tommasetti v. Astrue*, 533 F.3d  
15 1035, 1041 (9th Cir. 2008) (not improper to reject an opinion presenting inconsistencies  
16 between the opinion and the medical record).

17 Inconsistent with activities

18 The ALJ also found the challenged opinions to be inconsistent with Plaintiff's music  
19 activities, indicating that it is "somewhat inconceivable that someone with the marked/severe

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21 <sup>4</sup> In discounting the challenged opinions due to lack of support in or inconsistency with the  
22 record, the ALJ also noted that some of these opinions referenced diagnoses for conditions that the  
ALJ had found to be not medically determinable. (AR 1438-40.) Plaintiff argues that the ALJ erred in  
finding those conditions to be not medically determinable (Dkt. 12 at 16), but for the reasons  
explained *supra*, the Court finds no harmful error in that aspect of the ALJ's decision.

01 cognitive, social, and mental limitations” described by the providers would be able to spend  
02 “80% of his day, every day, creating his own music and performing it outside to the public[.]”  
03 (AR 1438.)

04 Plaintiff argues that his music activity does not show that he could work (Dkt. 12 at  
05 15), but again, the ALJ did not cite his music activities as proof that he could work. Instead,  
06 the ALJ reasonably found that Plaintiff’s music activities were inconsistent with the  
07 limitations described in the challenged opinions. (*See, e.g.*, AR 418 (describing Plaintiff’s  
08 isolation and avoidance of other people), 429-30 (describing Plaintiff’s inability to initiate  
09 activities), 431 (describing Plaintiff’s paranoia around other people and marked impairments  
10 as to concentration and focus), 860 (describing Plaintiff’s confusion, concentration/focus  
11 deficits, paranoia, and social deficits), 1642 (describing Plaintiff’s severe distractibility), 1653  
12 (describing Plaintiff’s struggle to pursue meaningful activity and his social avoidance that  
13 leads him to often stay home alone), 2199 (describing Plaintiff’s inability to engage in social  
14 and cognitive functioning 30-50% of the time).) This inconsistency is a legally sufficient  
15 reason to discount the challenged opinions. *Rollins v. Massanari*, 261 F.3d 853, 856 (9th Cir.  
16 2001) (affirming an ALJ’s rejection of a treating physician’s opinion that was inconsistent  
17 with the claimant’s level of activity); *Carmickle v. Comm’r of Social Sec. Admin.*, 533 F.3d  
18 1155, 1164 (9th Cir. 2008) (finding that inconsistency with a claimant’s activities is a  
19 germane reason to discount a lay statement).

20 Lack of familiarity with the longitudinal record

21 The ALJ noted that most of the authors of the challenged opinions did not have access  
22 to the entire longitudinal treatment record. (AR 1438.) Plaintiff correctly notes that the ALJ

erroneously included a treating provider (Ms. Caliboso) in this rationale (Dkt. 12 at 16), but this error is harmless because the ALJ provided multiple other valid reasons to discount Ms. Caliboso's opinion, some of which are unchallenged. (AR 1437-38, 1441.)

But the ALJ correctly noted that the other opinions, written by examining or non-examining sources, were rendered without access to the longitudinal treatment record (AR 1438), and this is a specific, legitimate reason to discount those opinions. *See* 20 C.F.R. §§ 404.1527(c)(6), 416.927(c)(6). Although Plaintiff argues that this line of reasoning is not legitimate because the ALJ credited the opinions of non-examining State agency consultants (Dkt. 12 at 16), those consultants had access to more of the record than the sources discounted by the ALJ. Furthermore, although Plaintiff argues that this reasoning does not legitimately apply to Dr. Widlan because he examined Plaintiff twice (Dkt. 12 at 16), both of Dr. Widlan's examinations were performed without access to the treatment record. (AR 371, 859.) Thus, Plaintiff has not shown that the ALJ erred in finding that certain opinions were rendered without access to the treatment record, or in discounting those opinions on that basis.

Partial reliance on self-report

The ALJ found that the challenged opinions were rendered with at least partial reliance on Plaintiff's self-reporting, and because the ALJ had found that his self-report was not entirely reliable, the ALJ discounted the opinions to the extent that they were based on Plaintiff's self-report. (AR 1438.)

Plaintiff argues that because psychological examinations by their nature depend on a patient's report, the sources' reliance on Plaintiff's self-report does not undermine their opinions. Dkt. 12 at 15-16. This argument is not persuasive in this case because the ALJ

specifically noted discrepancies between Plaintiff's self-report to examining psychologists and his self-report to treating sources. (AR 1435 (noting that Plaintiff reported psychotic symptoms to examiners evaluating him for benefits eligibility, but denied such symptoms to treating sources).) Under these circumstances, the ALJ did not err in discounting opinions to the extent they were based on self-reporting that the ALJ specifically found unreliable. *See Bray v. Comm'r of Social Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009) ("As the district court noted, however, the treating physician's prescribed work restrictions were based on Bray's subjective characterization of her symptoms. As the ALJ determined that Bray's description of her limitations was not entirely credible, it is reasonable to discount a physician's prescription that was based on those less than credible statements."); *Calkins v. Astrue*, 384 Fed. Appx. 613, 615 (9th Cir. June 17, 2010) ("[A]n ALJ must be permitted to discount an opinion based principally upon a claimant's self-reporting if the record contains objective evidence that the self-reporting is not credible.").

Mr. Robinson

The ALJ discounted Mr. Robinson's September 2012 letter for two additional reasons: (1) Mr. Robinson had only seen Plaintiff five times before writing the letter, and (2) Mr. Robinson's treatment notes do not document the problems Mr. Robinson described in his letter. (AR 1440.)

Plaintiff argues that the ALJ erred in finding that Mr. Robinson had only seen him five times, pointing to references to treatment sessions on other dates. Dkt. 12 at 17 (citing AR 423-28). The record does reference more than five sessions, as the Commissioner acknowledges (Dkt. 14 at 15), but not all of the corresponding treatment notes are in the

01 record. In any event, the ALJ's error in describing the frequency of Plaintiff's appointments  
02 with Mr. Robinson is harmless because the ALJ gave other reasons to discount Mr.  
03 Robinson's opinion (as addressed above), and also pointed to treatment notes that are  
04 inconsistent with the limitations Mr. Robinson described. (AR 1440 (citing AR 395, 397,  
05 462, 470, 480, 482).) Plaintiff points to other treatment notes from 2014 and 2015 that he  
06 contends corroborate Mr. Robinson's letter, but those notes post-date Mr. Robinson's letter  
07 and thus do not show that the ALJ erred in finding that Mr. Robinson's letter was inconsistent  
08 with Plaintiff's contemporaneous treatment notes. Dkt. 12 at 17 (citing AR 900, 903, 1017,  
09 1036-37, 1063-64, 1118-19, 1124, 1136-37). Accordingly, the Court affirms the ALJ's  
10 assessment of Mr. Robinson's letter.

11 For all of these reasons, the Court finds that Plaintiff has not established harmful error  
12 in the ALJ's assessment of the medical opinion evidence.

13 **CONCLUSION**

14 For the reasons set forth above, this matter is AFFIRMED.

15 DATED this 15th day of January, 2021.

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18 Mary Alice Theiler  
19 United States Magistrate Judge  
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